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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 2, 1994

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: GEN Docket 90-314
PP Docket 93-253

ex parte presentation

Ladies and Gentlemen:

Small Independent rural telephone companies and their representative associations and organizations are concerned with ensuring that the rules and regulations adopted by the Federal Communications Commission (FCC) with regard to the spectrum allocation and license auctioning of broadband Personal Communications Services (PCS) incorporate meaningful provisions that will result in the dissemination of spectrum to small Independent rural telephone companies - consistent with the Congressional mandate incorporated in the Omnibus Budget Reconciliation Act of 1993, Section 309(j).

Numerous rural telephone companies and their representatives have participated in extensive individual efforts through both formal pleadings and ex parte meetings to provide the Commission with specific proposals to address the Congressional mandate, together with both the policy and legal basis for the implementation of each proposal. In order to facilitate the Commission's consideration of these proposals, the undersigned rural telephone company representative organizations and associations have joined together to endorse and support the adoption of the following positions by the Commission:

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I. Dissemination of Spectrum to Members of Designated Entity Groups Can Only Be Ensured by Dedicating a Block of Spectrum That Will Be Auctioned Only to Members of Designated Entity Groups or Consortia They Control.

A Channel Block of 30 MHz in the lower band should be designated to be licensed in auctions open to participation only by rural telephone companies and members of other designated entity groups or consortia controlled by rural telephone companies or members of other designated entity groups. This is the only proposal on the record before the Commission which ensures that spectrum will be disseminated to members of the Designated Entity groups. The adoption of this proposal alone, however, is not sufficient to promote the dissemination of spectrum to rural telephone companies. In addition, rural telephone companies and other designated entities should be afforded preferences in the form of installment payments and bidding credits when bidding on any channel block.

II. Rural Telephone Companies Should be Permitted to Pay for Their Winning Bid Through Installment Payments Over the License Period.

Small rural telephone companies do not have the capital resources to bid for spectrum to cover large BTAs and MTAs without the opportunity to spread the payment for the winning bid over the 10 year period of the license. Traditional financial institutions open to rural telephone companies have indicated that financing may be available for construction of PCS systems, but not for spectrum auction bidding. (See attached Lending Policy Statement from the Rural Telephone Finance Corporation.) In order to encourage their participation in the provision of PCS, rural telephone companies, and consortia they control, should be permitted to pay for their winning bid on any channel block through installment payments (10% of the winning bid per year).

III. Bidding Credits Should Be Available to Rural Telephone Companies.

Even with the opportunity to pay for a winning bid through installment payments, rural telephone companies, like other small businesses and many women and minority controlled enterprises, do not have the financial ability to successfully compete in auctions against "deep pocket" individuals and entities. In order to encourage rural telephone company participation in competitive auctions and to discourage the aggregation of control of spectrum by a relatively few large companies, rural telephone companies should be entitled to bidding credits when they successfully bid in auctions open to non-designated entities. Bidding credits of at least 50% should be awarded to rural telephone companies, and consortia they control, to successfully compete against "deep pocket" auction participants.

Contrary to the proposal included in the Commission's Order (para. 244) the provision of the bidding credit should not be contingent on the rural telephone company's undertaking construction beyond the construction benchmarks established for all other licensees - this proposal disserves the public interest by discouraging rural telephone company participation in PCS. Bidding credits should be available to rural telephone companies to encourage their participation in auctions with "deep pocket" companies in order to promote the public policy that spectrum should not end up in the hands of a few. Rural telephone companies will not be encouraged to provide advanced services to their rural service areas by punitive measures.

IV. The Definition of Rural Telephone Company Should Be Revised To Include All Local Exchange Carriers Which Have Already Been Classified As Economically Small Under The Commission's Established Rules.

The Commission's proposed definition of the "Rural Telephone Company" designated entity group should be revised to ensure the inclusion of all small local telephone companies which predominantly serve rural America. The established Commission rules recognize $100 million annual gross revenues as an appropriate threshold for distinguishing large and small local exchange carriers. (See, e.g., 47 C.F.R. §§ 32.11(a), 43.21-43.43, and 64.903.)

Accordingly, the Rural Telephone Company designated entity definition should include all local exchange carriers which, together with their affiliates, have annual gross revenues of less than $100 million. Any local exchange carrier qualifying as a rural telephone company should additionally qualify for any preferences accorded to small businesses.

V. The Commission's Rules Concerning the Treatment of Bidding Consortia Should Not Discourage Rural Telephone Companies and Other Members of Designated Entity Groups From Working Together.

Where more than 50% of the ownership of a bidding consortia is attributable to an entity or entities that belong to a designated entity group, the consortia should be eligible for any preferences that would be available to the designated entity group. For example, if more than 50% of a bidding consortia is controlled by rural telephone companies, the consortia should be entitled to the designated entity preferences available to both rural telephone companies and small businesses. The implementation of this proposal will enable members of designated entity groups to participate in capital intensive spectrum bidding and system implementation through the formation of alliances which will enable them to better compete with large companies.

VI. Cellular Carrier Eligibility Restrictions Should Not Apply To Rural Telephone Companies.

In order to promote service deployment in rural areas, PCS license eligibility restrictions based on cellular ownership should not be applicable to rural telephone companies. The application of any restriction unnecessarily impedes the ability of these companies to provide meaningful competitive and innovative services, contrary to the Congressional mandate to disseminate spectrum to rural telephone companies. Proposals before the Commission to limit the total amount of spectrum under the control of a single competitive mobile service provider further demonstrate that there is no basis to limit rural telephone company participation in PCS licensing.

Moreover, the Commission should allow any entity to own up to 20% of a bidding consortium regardless of any ownership it holds in any cellular license. The adoption of this proposal will ensure that PCS license eligibility restrictions on cellular carriers do not inadvertently discourage alliances between cellular carriers, rural telephone companies and other parties for the formation of viable competitive PCS applicants.

VII. Rural Telephone Companies Should Be Permitted to Partition PCS Licenses.

In order to promote the provision of service to rural areas, the Commission should make clear that rural telephone companies will be permitted to partition PCS licenses in order to provide service in a defined service area including their local exchange service area. A request to partition a license by a rural telephone company should be granted unless the licensee demonstrates a commitment to provide service to the rural area.

To foster implementation of PCS in rural areas, the Commission should ensure that the partitioning does not result in unjust enrichment to the licensee; the licensee should not be permitted to charge the rural telephone company more than a pro rata share of its winning bid (on a per pop basis) for the partitioned license. Coverage provided by a rural telephone company in a rural service area should be attributable to the original PCS licensee's demonstration of compliance with the overall construction benchmarks for the entire licensed area.

In order to ensure that rural telephone companies are encouraged to deploy service in rural areas through the partitioning of licenses, there should be no construction benchmarks imposed on the partitioned area. The imposition of any such benchmarks could discourage rural telephone companies from participation in PCS by inadvertently imposing unrealistic and uneconomical build out requirements in rural area.

CONCLUSION

In order to facilitate the implementation of PCS in a manner consistent with the Congressional mandate regarding participation by members of designated entity groups including rural telephone companies, the undersigned associations and organizations respectfully urge the Commission to adopt the proposals set forth above. By doing so, the Commission can provide meaningful treatment of rural telephone companies and other designated entity groups that will realistically encourage their participation and better achieve the public policy interest of ensuring that the allocation of spectrum and the delivery of PCS services is not aggregated among a few large companies.

Respectfully submitted,

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Western Alliance

Small Telephone Companies of Louisiana

Rural Cellular Association

John A. Prendergast
Minnesota Equal Access Network Services (MEANS)

CERTIFICATE OF SERVICE

I, Charles D. Cosson, hereby certify that on this 2nd day of June, 1994, a copy of the foregoing "Ex Parte Comments of Independent Telephone Company Representatives" was served by hand delivery to the following parties:

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RTFC

DRAFT FOR DISCUSSION PURPOSES February 18, 1994

TERM SHEET
PCS/PCN LONG-TERM FINANCING

Borrower: Operating Wireline Telephone Companies

Purpose: Purchase and construction of PCS and PCN equipment.

Amount: As required, up to 50% of the Borrower's net worth.

Loan Term: Eight years based upon one year advance commitment and seven year amortization.

Security: Unsecured.

Interest Rate: RTFC's long-term variable interest rate as announced or published plus 25 basis points, or a negotiated fixed rate for all or a portion of the loan.

RTFC Equity Requirement: A Subordinated Capital Certificate (SCC) must be funded in the amount of 10% of each advance of loan funds either with loan proceeds or general funds. The SCC will be amortized annually to maintain an SCC level equal to 10% of the outstanding loan principal.

Principal Repayment: The loan can be amortized on the basis of either level debt service or level principal plus interest.

Loan Prepayment: Unscheduled principal payments can be made on the variable rate portion of the loan at any time subject to a 33 basis point fee. Any portion of the loan bearing a fixed interest rate will generally not be eligible for prepayment.

Loan Standards and Covenants: Borrower must meet the following standards in order to qualify for and maintain the RTFC loan:

1. Borrower must be an operating wireline telephone company.
2. Borrower's equity as a percent of total assets must be greater than or equal to 25%.
3. The loan amount may not exceed 50% of Borrower's equity.
4. The Borrower must have achieved a debt service coverage ratio for each of the two prior years of 1.25 or greater.
5. The Borrower may not be in default with regard to any of its financial obligations or covenants.
6. The borrower may not incur additional indebtedness with any lenders other than REA and RTB without the prior written approval of RTFC.